

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

ROBERT CONNER, et al.

PLAINTIFFS

V.

CIVIL ACTION NO.: 1:08-CV-148-SA-JAD

FOOD GIANT SUPERMARKETS, INC.

DEFENDANT

ORDER OF DISMISSAL

Before the Court is the Defendant's Motion to Dismiss for Want of Prosecution [39]. For the reasons stated below, the motion is granted, and this case is dismissed without prejudice.

The Plaintiffs filed their Complaint in the Circuit Court of Lowndes County, Mississippi on April 25, 2008. Defendant Food Giant Supermarkets, Inc. ("Food Giant") removed to this Court on May 27, 2008 and filed its Answer and Defenses on June 9, 2008. Defendant then served its First Set of Interrogatories and Requests for Production of Documents on the Plaintiffs on June 23, 2008.

As of September 12, 2008, the Plaintiffs had neither responded to Defendant's discovery requests nor provided Defendant with their Pre-Discovery Disclosures. The Court ordered the Plaintiffs to comply with the Pre-Discovery Disclosures requirements of the Rules and to respond to Defendant's discovery within thirty days, and the Plaintiffs did not provide disclosures or respond to discovery requests within the time granted by the Court.

Defendant filed its Motion to Compel on October 28, 2008, and the Plaintiffs did not respond to it. Accordingly, the Court granted the Motion to Compel, ordering the Plaintiffs to provide responses to Defendant's discovery requests and to comply with the disclosures requirements by December 1, 2009. The Court also ordered the Plaintiffs to show cause why they should not be required to pay Defendant's fees and expenses for the Motion to Compel.

The Plaintiffs did not respond, and the Defendant filed its Motion to Dismiss for Want of

Prosecution on December 29, 2008.

Rule 41(b) of the Federal Rules of Civil Procedure provides:

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal under this rule - except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 - operates as an adjudication on the merits.

FED. R. CIV. P. 41(b).

The Plaintiffs have not provided Defendant with Pre-Discovery Disclosures, have not responded to discovery requests, did not respond to a Motion to Compel, did not comply with an Order of this Court, and did not respond to Defendant's Motion to Dismiss. As such, this action is dismissed without prejudice, pursuant to Rule 41(b).

The Defendant's Motion to Dismiss is granted, and this action is **DISMISSED WITHOUT PREJUDICE**. As such, it is unnecessary for the Court to rule on the Defendant's Motion to Preclude Designation of Expert Witnesses by Plaintiff [40].

SO ORDERED this the 13th day of February, 2009.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE